IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPEALLTE JURISDICTION.

CRIMINAL APPEAL NO. 622 OF 1996

The State of Maharashtra..... ....Appellants.

(Orig.Complt..)
V/s

1. Machindra Namdeo Kadam
2. Gorakh Namdeo Kadam
3. Sandipan Namdeo Kadam... .... Respondents.
(Orig.Accd.1 to 3)

Mrs.V. R. Bhosale, APP for the State.

Mr.Prashant Badole, Adv. for respondents.

CORAM: V.G. PALSHIKAR
AND
R.C. CHAVAN, JJ.

2nd August, 2005.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order of acquittal passed by the learned Joint District and Additional Sessions Judge, Sangli, in Sessions Case No.18 of 1992 on 20.7.1996 the State has preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. With the assistance of the learned Public Prosecutor and the learned advocate for the respondents we have scrutinized the entire evidence on record and reappreciated the same.

3. The prosecution case stated briefly is that there was dispute regarding agricultural lands between the accused and the complainant. While this dispute was going on on 4.10.1991 the accused persons started sowing operation in the disputed land and when they were requested not to do so they assaulted the complainant and his brother as a result of which the brother of the complainant died and the complainant was severely injured. He lodged First Information Report on the basis of which investigation was carried out, accused persons were arrested and later prosecuted under section 302 read with section 34 of Indian Penal Code. The prosecution examined nine witnesses to prove its case and the learned trial Judge on appreciation of the entire evidence on record came to the conclusion that the prosecution has failed to prove the guilt beyond reasonable doubt. He therefore proceeded to acquit the accused persons which acquittal is questioned by the State in this appeal.

4. The prosecution has successfully proved homicidal death of the victim by examining P.W.1-Dr.Ramchandra Madne who conducted the post mortem and stated that the victim met his death due to injuries caused to his person. There is therefore no dispute that the death was homicidal. The prosecution then has to prove that the accused persons present respondents were the persons responsible for that homicidal death. To that end the prosecution has examined three witnesses. They are P.W.3-Janardan Kadam, P.W.4-Rohidas Kengare and P.W.5-Laxman Kadam. P.W.3-Janardan is the complainant who lodged the FIR. It was this Janardan who along with the victim Ramchandra were assaulted by the accused persons as alleged by

Janardan. Unfortunately for the prosecution this main witness has turned hostile. He does not state before the Court what transpired on that day. Before the Court he deposed that Ramchandra was chased by bullock and he therefore fell on some stones, sustained injuries and because of those injuries he died. He was declared hostile and he has been extensively cross examined. He has denied all the suggestions made by the prosecution. According to him, nothing happened on Friday 4.10.91. He does not depose about anything. He was actually an injured eye witness of the occurrence and has yet failed to depose against the accused persons probably because of their relationship.

5. P.W.4-Rohidas is another eye witness who has deposed to the assault by the accused persons on Ramchandra and Janardan and has narrated the entire incident. However he does not mention in his narration presence of P.W.5-Laxman though P.W.5-Laxman mentions presence of P.W.4-Rohidas. It is obvious from the evidence of these two persons that they speak of the incident of assault. They generally corroborate each other in relation to the account of the assault. It therefore raises question as to whether they be believed or P.W.3-Janardan the hostile witness be believed. If the hostile witness's statement before he was declared hostile is considered no incident occurred on 4.10.1991. Then what was witnessed by P.W.4-Rohidas and P.W.5-Laxman becomes doubtful and if the statement of these witnesses is to be accepted then the prosecution overcomes the hostility of P.W.3-Janardan. This situation therefore creates a doubt as to the correct means of narration given by this witnesses. In any event, it does create doubt in the minds of

reasonable prudent man regarding happening on that day.

6. P.W.6-Ankush Kadam is son of the victim Ramchandra but he is not an eye witness and he has deposed about the dispute over the land. The dispute over the land is admitted by all concerned. That could be the motive and there will have to be therefore cogent evidence to show that it was in furtherance of this motive that the accused persons assaulted the victim Ramchandra. That par;t of evidence becomes seriously doubtful when we consider the hostility of P.W.3-Janardan and the omissions committed by P.W.4-Rohidas and P.W.5-Laxman. P.W.7-Shrirang Kadam saw Janardan injured and took him to the hospital. But he has not seen any assault nor does he know how he was injured. P.W.8-Ibrahim Mulla is the Police Head Constable and P.W.9-Khanderao Vidhate is the investigating officer who proves the recovery of blood stained articles at the instance of accused. Taking into consideration the injuries as proved by P.W.1-Dr.Madne it is extremely difficult to believe that the weapon used in inflicting these injuries would not have any blood stains. However it is proved on record that the articles seized at the instance of the accused did not have any blood stains. It was on appreciation of these circumstances that the learned trial Judge viewed the accused not guilty. The maximum that can be said in this case is the evidence of P.Ws. 4 and 5, statement of P.W.7, recovery of articles was enough for conviction. At the same time it can also be inferred that this evidence in itself is grossly inadequate. It is settled position in law that where two views are possible one consistent with the innocence of the accused is possible then the Appellate Court should be very slow in

interfering with such order of acquittal. In our opinion, no case for such interference is made out. In the result the appeal fails and is dismissed. Respondents-accused are already on bail. Their bail bonds stand canceled.